



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2011-0376]

Hours of Service of Drivers: Underwater Construction Corporation Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA has received an application from the Underwater Construction Corporation (“UCC”) for an exemption for 165 of its drivers from the hours-of-service (HOS) record of duty status provision in 49 CFR 395.8 that requires every commercial motor vehicle driver to record his/her duty status for each 24 hour period using methods prescribed in that section. UCC claims that approximately 88 percent of its work is performed for utilities, and that such driving operations fall under the “Utility Service Vehicle” (USV) exemption in 49 CFR 395.1(n). UCC would like to use its payroll system, which it claims tracks an employee’s time spent driving and working, to record drivers’ record of duty status for driving operations not covered by the USV exemption. UCC states that if granted an exemption from 49 CFR 395.8, it would continue to track employee hours through its payroll system to ensure compliance with the HOS rules. UCC believes its payroll system provides a reliable proactive approach to tracking employee hours.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2011-0376 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's online privacy policy at

www.dot.gov/privacy or the complete Privacy Act Statement in the Federal Register published on December 29, 2010 (75 FR 82133).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division;
Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail:
MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety

equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period, and explain the terms and conditions, of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

UCC operates as a commercial diving contractor that provides underwater inspection, maintenance, construction, and technical support services. The company has offices in Connecticut, Michigan, and Tennessee, and performs diving services for clients around the world. UCC maintains a total of 37 commercial motor vehicles with gross vehicle weight or gross combination weight ratings of 10,001 pounds or more, and employs 165 personnel who operate these vehicles.

UCC's driving operations are performed for the sole purpose of transporting personnel and equipment to and from job sites and account for two percent of the man-hours worked each year. UCC claims that 88 percent of its work is performed for utilities and that the majority of its driving falls under the USV exemption in 49 CFR 395.1(n). Instead of complying with the provisions in 49 CFR 395.8 for the 12 percent of hours not covered under the USV exemption, UCC would like to use its payroll system to record the drivers' records of duty status. According to UCC, if granted the exemption from 49 CFR 395.8, it would continue to track employee hours, which

include time spent driving and working, through its payroll system to ensure they are not in violation of the HOS rules.

A copy of UCC's exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on the UCC's application for an exemption from the driver's record of duty status rule in 49 CFR part 395. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**.]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: February 22, 2012

Larry W. Minor
Associate Administrator for Policy

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